IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1408 OF 2004
IN
SUIT NO. 1910 OF 1996

Rabiya Yusuf Patankar & 3 Ors .. Plaintiffs.

V/s.

1. Tanveer Yusuf Patankar & Anr .. Defendants.

Shri P.M. Havnur for the Plaintiffs.
Shri A.A. Joshi i/b. S.S.Jain for added Respondent.

CORAM: S.J. VAZIFDAR, J.

DATE : 26TH OCTOBER, 2004.

P.C. :

1. There is no serious opposition to prayer clause (a). By prayer (a) the defendant seeks restoration of the weather shed which was demolished by the devloper. The suit flat is in the possession of the Court Receiver pursuant to an order of this Court dated 24th July, 1996. The weather shed is certainly incidental to the suit flat. The demolition ought not to have taken place except with the express permission of this Court.

2. In the circumstances, prayer clause (a) is allowed. Prayer (b) of the Chamber Summons seeks various directions against the Court Receiver in respect of the alleged illegal construction being put up by the Respondents on the building. This is an issue between the parties and the society which cannot be agitated in this suit. However as the Court Receiver is appointed of the suit flat and the right claimed by the parties to the construction of the society is one attached to the suit flat, the parties must adopt appropriate proceedings. The Court Receiver to take action on their behalf against the society. The Chamber Summons is made absolute in terms of prayer clause (a). Liberty to the Plaintiff and or the Defendant to make appropriate application to enable them either themselves or through the Court Receiver to take action against the society.

. All concerned to act on a ordinary copy of this order duly authenticated by the Office/ Court Stenographer of this Court.

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